IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C. W.P. No. 5491 of 2007
Date of decision: 18.04.2007

Mahender Singh .....*Petitioner*

Versus

Financial Commissioner, Haryana and Ors. . .....*Respondents*

CORAM: HON'BLE MR. JUSTICE JASBIR SINGH
HON'BLE MRS. JUSTICE NIRMAL YADAV

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Present: Mr. Sachin Mittal, Advocate
for the petitioner

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JASBIR SINGH, J. (Oral)

Dispute, in this writ petition, pertains to appointment of Lambadar in village Sunderpur Jarau, Sub Tehsil Farukhnagar, Tehsil and District Gurgaon.

On accrual of vacancy, applications were invited. Petitioner, respondents Nos.3 and 4 were the candidates. On appraisal of reports, made by the subordinate revenue staff, the Collector appointed the petitioner as Lambardar of the village. Thereafter, respondent No.3 went in appeal. The Commissioner upset the order passed by the Collector and appointed respondent No. 3 as Lambardar. While allowing the appeal, it was observed by the Commissioner that:-

"After hearing carefully the arguments of learned Advocates of both the parties and perusing the file of lower court it has

been found that shri Mahender Singh is of 45 years of age and Mahabir Singh is of 48 years of age. Mahender Singh has studied upto 10th and Mahabir is 10th class pass. Mahender Singh has got deposited Rs.7,05,000/- in small saving schemes with the help of others whereas Mahabir Singh, appellant has deposited R.1,00,000/- himself and an amount of Rs.22,10,000/- got deposited with the help of others. Similarly, Mahender Singh respondent has motivated 9 cases of family planning whereas the appellant has made his contribution in National Programme by getting done 38 cases of vasectomies. Mahender Singh respondent has obtained decree of 8 acres of land in his favour during the proceedings of Nambardari and before this he had no land whereas there is 8 acres of land in the name of appellant, 2 ac res in the name of his wife, and 2 acres in his father's name totalling ownership of 12 acres of land. The appellant has donated Rs.500/- to Red Cross Society, Rs. 1000/- in Kargil and Rs.100/- for victims of Gujrat Earthquake and Rs.5100/- donated to Baba Baldev Dass Education Society. Similarly, Shri Mahabir Singh candidate is more suitable than respondent. So far as unsuitability of Mahender singh is concerned, after perusal of the available document On the file of the lower court it has been found that he and his family had illegally grabbed the land of the panchayat and cultivated which ha sbeen left during the proceedings of

Nambardari. Shri Lakhmi Chand father of Mahender Singh and his brother Virender Singh got passed a resolution in collusion with ex-sarpanch regarding illegal purchase of land of the panchayat and after purchasing got registered this land without the permission of District Collector and Director Panchayats Haryana, the inquiry of which was got conducted by Block Development and Panchayat Officer wherein the above facts were found correct. Mahender Singh respondent has himself helped in grabbing the land of the panchayat for getting mutated on the basis of registration. From the perusal of the application of Smt. Neetu wife of Mukesh son of Shri Mahender Singh, available in the file of the lower court at page 767 it reveals that Smt. Neetu had informed the District Collector regarding the case against the respondent under Section 376/511/34 IPC that he is not a man of good character, but the District Collector ignored all these facts. District Collector has considered Shri Mahender Singh respondent no.1 as suitable for Nambardari post only because "he is a son of freedom fighter and being the son of freedom fighter has good qualities"- whereas in the Jamabandis available on the file of lower court Lakhmi Chand father of respondent had been keeping illegal possession for about 25 years and has left the land of the Panchayat after submitting affidavit only with the intention to become Nambardar himself or to get his son

(respondent no.1) appointed as Nambardar and in this connection it has not been confirmed that actually the father of the respondent has dispossessed the panchayat land or not. The father of Mahender Singh and his uncle with the collusion of ex-sarpanch without getting the permission fo the competent authorities got Bainam of Panchayat land in his name. A son of such a freedom fighter has no right to become Nambardar who has tried to grab the panchayat land. The District Collector has ignored this fact that father of appellant Mahabir was also in Indian Army who was awarded Independence Medal, Defence Medal and War Medal. The District Collector has not mentioned anything in this regard in his order. The District Collector has also not loked into the matter of FIR No.64 dated 4.5.2006 under Section 376, 511, 323, 506, 34 IPC against Mahender Singh and his family, which is available on the file of learned lower court wherein a hatefull charge has been levelled against the respondent and hi family. For an important post like Nambardar a person with fair reputation is necessary. So far as the qualifications of Jaswant Singh candidate is concerned, this candidate has not cooperated with the Government in national programmes like family planning and small savings schemes. As such he cannot be made more eligible candidate for Nambardari than the appellant. The District Collector has ignored the facts and evidence

available on the file while appointing as Nambardar to respondent no.1. I set aside the decision of the District Collector considering it incorrect and accepting the appeal of the appellant and considering Mahabir Singh Appellant an eligible candidate for Nambardari appoint him as Nambardar of Village Sunderpur Jarau in place of deceased Nambardar Bane Singh."

The petitioner went in revision, which was dismissed. Hence this writ petition.

As per established law, in the cases of appointment of Lambardar, choice of the Collector is not supposed to be interfered with, unless and until, the same is perverse in law or on facts. We feel that in the instant case, the Collector has committed a mistake by not appreciating the facts properly when appointment of Lambardar was made. So far as comparative merits are concerned, both the candidates are equally balanced. However, it has come on record that when process to appoint Lambardar had started, the petitioner was not having any land in his name. During pendency of the proceedings, he got the land transferred in his own name through a decree of the civil Court. Qualifications of the candidates are supposed to be taken note of at the time when vacancy was notified and not thereafter. Holding of land is an essential qualification to become a Lambardar. Further more, it has also come on record that at the instance of his daughter-in-law, an FIR was registered against the petitioner and his other family members under Sections 376/511/323/506/34 IPC, that case was pending, when he was appointed as Lambardar of the Village. The Collector has committed an error in not

noticing that important fact, when appointment was made. It has also come on record that the petitioner and his father, have forcibly encroached upon the Gram Panchayat's land and the same was vacated during proceedings for appointment of Lambardar. The contention of counsel for the petitioner that name of respondent No.3, is entered in voter lists of two villages, is of no consequence at this stage. There is nothing on record that the respondent no.3 had participated in elections at two places.

No case is made out for interference.

Dismissed.

(JASBIR SINGH)
JUDGE

(NIRMAL YADAV)
JUDGE

April 18, 2007
mohan